



19 MAY 2005  
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In re Application of:	:	
RASMUSSEN, Steen, Barbrand	:	DECISION ON PETITION UNDER
U.S. Application No.: 10/501,224	:	37 CFR 1.47(b)
PCT No.: PCT/DK03/00011	:	
International Filing Date: 09 January 2003	:	
Priority Date: 10 January 2002	:	
Attorney's Docket No.: 66722-057-7	:	
For: PIEZO ELECTRIC PUMP AND	:	
DEVICE WITH SUCH PUMP	:	

This decision is issued in response to the "Petition Under 37 CFR 1.47(b)" filed 11 April 2005. Deposit Account No. 04-2223 will be charged the required petition fee.

### **BACKGROUND**

On 09 January 2003, applicant filed international application PCT/DK03/00011 which claimed a priority date of 10 January 2002 and which designated the United States. On 17 July 2003, a copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) by the International Bureau (IB). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 12 July 2004 (10 July 2004 was a Saturday).

On 12 July 2004, petitioner filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 21 January 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that an executed oath or declaration acceptable under 37 CFR 1.497, the surcharge for filing the declaration later than thirty months after the priority date, and additional claims fees (or an amendment eliminating the multiple dependent claims) were required.

On 11 April 2005, petitioner filed a response to the Notification Of Missing Requirements (with required extension fee). The response included a preliminary amendment to remove the multiple dependent claims, the surcharge for filing the declaration later than thirty months after the priority date, and the petition under 37 CFR 1.47(b) considered herein. The petition seeks acceptance of the application without the signature of the sole inventor, whom petitioner states has refused to execute the application.

### DISCUSSION

A grantable petition under 37 CFR 1.47(b) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The present petition satisfies items (1), (2), and (3).

Regarding item (1), petitioner has authorized a charge to Deposit Account No. 04-2223 for the required petition fee. Based on this authorization, item (1) is satisfied.

In order to satisfy item (2), section 409.03(d) of the MPEP requires that the nonsigning inventor be provided with a copy of the complete application papers, including specification, drawings and claims. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made." Here, petitioner has provided a firsthand statement from Mikael T. Christensen, with accompanying exhibits, demonstrating that copies of the complete application papers have been provided to the nonsigning inventor. In addition, petitioner has provided a copy of a facsimile transmission from the nonsigning inventor to counsel herein in which the inventor confirms his refusal to execute the application. Based on this submission, item (2) is considered satisfied.

Regarding item (3), the petition includes an express statement of the last known address of the nonsigning inventor. Item (3) is satisfied.

Regarding item (4), the petition was not accompanied by an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor. Item (4) is therefore not satisfied.

Regarding item (5), section 409.03(f) of the MPEP states the following:

When an application is deposited pursuant to 37 CFR 1.47(b), the 37 CFR 1.47(b) applicant must prove that: (A) the invention has been assigned to the applicant, or (B) the inventor has agreed in writing to assign the invention to the applicant, or (C) the applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application.

Petitioner here has not provided evidence that the 37 CFR 1.47(b) applicant falls into any of the above categories. Such evidence must be provided, in the form described in section 409.03(f) of the MPEP, before item (5) can be considered satisfied.

Regarding item (6), petitioner has not made the express statement that granting of the present petition is necessary to preserve the rights of the parties or to prevent irreparable damages. Item (6) is therefore not satisfied.

Based on the above, petitioner has failed to satisfy all the requirements for a grantable petition.

### CONCLUSION

The petition under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)" and must include the materials required to satisfy items (4), (5), and (6) of a grantable petition, as discussed above and in the applicable sections of the MPEP.

Failure to provide a proper and timely response will result in abandonment of the application. Extensions of time are available under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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